

Securities and Exchange Commission

§ 240.12a-4

securities exchange or automated facility of a national securities association.

(5) The term *options class* means all of the put option or call option series overlying a security, as defined in Section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(6) The term *options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(7) The term *receipt* means, with respect to an order sent to an away market displaying a superior price, the time at which the order is either represented in the trading crowd or received by the specialist.

(b) *Broker-dealer disclosure requirements.* (1) Any broker or dealer that effects a transaction in a listed option for the account of its customer must disclose in writing to such customer, at or before completion of such transaction, as defined in §240.15c1-1:

(i) When such transaction is effected at a price that trades through a better price published at the time of execution; and

(ii) That better published price.

(2) A broker-dealer shall not be required to provide the disclosure set forth in paragraph (b)(1) of this section if:

(i) It effects such transaction on a market that is a sponsor or participant in an effective national market system options linkage plan that includes provisions reasonably designed to limit the incidence of customer orders being executed at prices that trade through a better published price, including prices published other than by a linkage plan sponsor or participant, or

(ii) The customer order is executed as part of a block trade.

(3) A customer order is executed at a price that trades through a better published price if:

(i) The price at which an order to purchase a listed option is executed is higher than the lowest offer, at the time the order was executed, published pursuant to a national market system plan for reporting quotations in listed options; or

(ii) The price at which an order to sell a listed option is executed is lower than the highest bid, at the time the

order was executed, published pursuant to a national market system plan for reporting quotations in listed options.

(4) Notwithstanding paragraph (b)(3) of this section, a customer order is not considered to be executed at a price that trades through a better published price if:

(i) The market on which the order is executed has verified that the market publishing such better price is experiencing a failure, material delay, or malfunction of its systems;

(ii) The quotations disseminated pursuant to the national market system plan for reporting quotations indicates that it is experiencing delays in transmitting such quotations;

(iii) Such better published price was published by an exchange whose members are relieved of their obligations under paragraph (c)(2) of §240.11Ac1-1 because, pursuant to paragraphs (b)(3) or (d)(4) of §240.11Ac1-1, such exchange is not required to meet its obligations under paragraph (b)(1) of §240.11Ac1-1; or

(iv) The customer order is executed only after the market publishing the better price fails to respond to an order routed to it within 30 seconds of the order's receipt by that market.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, or the removal of impediments to and perfection of the mechanism of a national market system.

[65 FR 75462, Dec. 1, 2000]

SECURITIES EXEMPTED FROM REGISTRATION

§ 240.12a-4 Exemption of certain warrants from section 12(a).

(a) When used in this section, the following terms shall have the meaning indicated unless the context otherwise requires:

(1) The term *warrant* means any warrant or certificate evidencing a right to subscribe to or otherwise acquire another security, issued or unissued.

(2) The term *beneficiary security* means a security to the holders of which a warrant or right to subscribe to or otherwise acquire another security is granted.

(3) The term *subject security* means a security which is the subject of a warrant or right to subscribe to or otherwise acquire such security.

(4) The term *in the process of admission to dealing*, in respect of a specified security means that (i) an application has been filed pursuant to section 12 (b) and (c) of the Act for the registration of such security on a national securities exchange; or (ii) the Commission has granted an application made pursuant to section 12(f) of the Act to continue or extend unlisted trading privileges to such security on a national securities exchange; or (iii) written notice has been filed with the Commission by a national securities exchange to the effect that such security has been approved for admission to dealing as a security exempted from the operation of section 12(a) of the Act.

(b) Any issued or unissued warrant granted to the holders of a security admitted to dealing on a national securities exchange, shall be exempt from the operation of section 12(a) of the Act to the extent necessary to render lawful the effecting of transactions therein on any national securities exchange (i) on which the beneficiary security is admitted to dealing or (ii) on which the subject security is admitted to dealing or is in the process of admission to dealing, subject to the following terms and conditions:

(1) Such warrant by its terms expires within 90 days after the issuance thereof;

(2) A registration statement under the Securities Act of 1933 is in effect as to such warrant and as to each subject security, or the applicable terms of any exemption from such registration have been met in respect to such warrant and each subject security; and

(3) Within five days after the exchange has taken official action to admit such warrant to dealing, it shall notify the Commission of such action.

(c) Notwithstanding paragraph (b) of this section, no exemption pursuant to this section shall be available for transactions in any such warrant on

any exchange on which the beneficiary security is admitted to dealing unless:

(1) Each subject security is admitted to dealing or is in process of admission to dealing on a national securities exchange; or

(2) There is available from a registration statement and periodic reports or other data filed by the issuer of the subject security, pursuant to any act administered by the Commission, information substantially equivalent to that available with respect to a security listed and registered on a national securities exchange.

(d) Notwithstanding the foregoing, an unissued warrant shall not be exempt pursuant to this section unless:

(1) Formal or official announcement has been made by the issuer specifying (i) the terms upon which such warrant and each subject security is to be issued, (ii) the date, if any, as of which the security holders entitled to receive such warrant will be determined, (iii) the approximate date of the issuance of such warrant, and (iv) the approximate date of the issuance of each subject security; and,

(2) The members of the exchange are subject to rules which provide that the performance of the contract to purchase and sell an unissued warrant shall be conditioned upon the issuance of such warrant.

(e) The Commission may by order deny or revoke the exemption of a warrant under this section, if, after appropriate notice and opportunity for hearing to the issuer of such warrant and to the exchange or exchanges on which such warrant is admitted to dealing as an exempted security, it finds that:

(1) Any of the terms or conditions of this section have not been met with respect to such exemption, or

(2) At any time during the period of such exemption transactions have been effected on any such exchanges in such warrant which (i) create or induce a false, misleading or artificial appearance of activity, (ii) unduly or improperly influence the market price, or (iii) make a price which does not reflect the true state of the market; or

(3) Any other facts exist which make such denial or revocation necessary or appropriate in the public interest or for the protection of investors.

Securities and Exchange Commission

§ 240.12a-5

(f) If it appears necessary or appropriate in the public interest or for the protection of investors, the Commission may summarily suspend the exemption of such warrant pending the determination by the Commission whether such exemption shall be denied or revoked.

(g) Section 240.10b-1 shall be applicable to any warrant exempted by this section.

(Secs. 3, 12, 48 Stat. 882, as amended, 892; 15 U.S.C. 78c, 78l)

[15 FR 3450, June 2, 1950, as amended at 18 FR 128, Jan. 7, 1953]

§ 240.12a-5 Temporary exemption of substituted or additional securities.

(a)(1) Subject to the conditions of paragraph (a)(2) of this section, whenever the holders of a security admitted to trading on a national securities exchange (hereinafter called the original security) obtain the right, by operation of law or otherwise, to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security, then:

(i) All or any part of the class of such other or substituted security shall be temporarily exempted from the operation of section 12(a) to the extent necessary to render lawful transactions therein on an issued or "when-issued" basis on any national securities exchange on which the original, the other or the substituted security is lawfully admitted to trading; and

(ii) The additional amount of the original security shall be temporarily exempted from the operation of section 12(a) to the extent necessary to render lawful transactions therein on a "when-issued" basis on any national securities exchange on which the original security is lawfully admitted to trading.

(2) The exemptions provided by paragraph (a)(1) of this section shall be available only if the following conditions are met:

(i) A registration statement is in effect under the Securities Act of 1933 to the extent required as to the security which is the subject of such exemption, or the terms of any applicable exemption from registration under such act have been complied with, if required;

(ii) Any stockholder approval necessary to the issuance of the security which is the subject of the exemption, has been obtained; and

(iii) All other necessary official action, other than the filing or recording of charter amendments or other documents with the appropriate State authorities, has been taken to authorize and assure the issuance of the security which is the subject of such exemption.

(b) The exemption provided by this section shall terminate on the earliest of the following dates:

(1) When registration of the exempt security on the exchange become effective;

(2) When the exempt security is granted unlisted trading privileges on the exchange;

(3) The close of business on the tenth day after (i) withdrawal of an application for registration of the exempt security on the exchange; (ii) withdrawal by the exchange of its certification of approval of the exempt security for listing and registration; (iii) withdrawal of an application for admission of the exempt security to unlisted trading privileges on the exchange; or (iv) the sending to the exchange of notice of the entry of an order by the Commission denying any application for admission of the exempt security to unlisted trading privileges on the exchange;

(4) The close of business on the one hundred and twentieth day after the date on which the exempt security was admitted by action of the exchange to trading thereon as a security exempted from the operation of section 12 (a) by this section, unless prior thereto an application for registration of the exempt security or for admission of the exempt security to unlisted trading privileges on the exchange has been filed.

(c) Notwithstanding paragraph (b) of this section, the Commission, having due regard for the public interest and the protection of investors, may at any time extend the period of exemption of any security by this rule or may sooner terminate the exemption upon notice to the exchange and to the issuer of the extension or termination thereof.